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ARIZONA ATTORNEY GENERAL

November 3, 1939.

Dr. Louis J. Sazo, Superintendent,
Arizona State Hospital for the Insane,
Phoenix, Arizona.

Dear Sir:

We have your letter of October 21st relative to malpractice insurance and propounding five certain questions which we shall answer in the same order as they appear in your request:

(1) The State of Arizona is not liable for any acts constituting malpractice, error, negligence or mistake, assault, slander, libel, undue familiarity and anaesthesia hallucinations committed by or chargeable to the physicians employed at the hospital or yourself, as the case may be.

(2) If suits are brought based upon acts or omissions constituting any of the above named things and damages are awarded to the plaintiff, the State of Arizona does not pay such damages or judgment.

(3) The Attorney General is the attorney for all State departments and necessarily if the State Hospital became involved in any litigation the Attorney General would defend such suit for and on behalf of the State.

(4) The bonds given by the officers and employees of the State do not include any kind of insurance other than to provide an additional security for the payment of any damages which may be suffered by a person at the hands of the officer giving the bond provided that the act or omission causing the damage is one of those things covered by the bond.

(5) Your fifth question is rather general and in making our answer herein we do not presume to cover every angle possible. However as a general rule any person committing a tort is responsible in damages for the injuries flowing from the commission of said tort regardless of whether another person may, as principal, be also liable. Whether or not the superintendent assumes responsibility for the acts of his assistants is a question difficult to answer without an actual case before us upon which to base our opinion. Ordinarily we would say that the Superintendent would not be responsible for the acts of his assistants on the assumption that he is not the employer of the assistants, but that as a matter of fact they are the employees of the State. However

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we can imagine a case where if the superintendent has the power of appointing his own assistants and he negligently exercises such power and selects a person totally unfit for the work contemplated that he might be liable for the tortious acts of the person so selected, on the ground that he was negligent in his selection, knowing at the same time that the work to be done by the assistant required services of a competent and skilled person.

We trust this is a sufficient answer to your inquiries.

Yours very truly,

JOE CONWAY,
Attorney General.

EDWARD P. CLINE,
Assistant Attorney General.

EARL ANDERSON,
Special Assistant
Attorney General.

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